

REMARKS

Invention restriction

Claims 12-31 have been restricted to two inventions: Invention I encompassing claims 12-26, and Invention II encompassing claims 27-31. Applicant hereby elects Invention I for immediate examination, and to that extent has withdrawn claims 27-31.

Species restriction

Claims 12-26 have been restricted to two species: Species I, encompassing claims 12-24, and Species II, encompassing claims 25-26. Applicant respectfully but strongly traverses this restriction requirement.

The Examiner's basis for this species restriction is that "the species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species" (Restriction requirement, p. 4). Applicant strongly disagrees that the claims recite mutually exclusive characteristics.

For instance, independent claim 12 of Species I is directed to a high-resolution magnetic encoder system, and independent claim 25 of Species II is identically directed to a high-resolution magnetic encoder system. To this extent, there are no mutually exclusive characteristics of the species, since independent claims 12 and 25 are identically directed to the same type of system.

As another example, independent claim 12 of Species I is directed to a magnetic resistive sensor, and independent claim 25 of Species II is similarly directed to a magnetic means for sensing a surface of a magnetic medium. These claims do not recite *mutually exclusive characteristics*, but in fact recite *similar, non-mutually exclusive characteristics*. The magnetic sensor of claim 12 inherently performs sensing (i.e., that is what sensors do), and the magnetic means of claim 25 explicitly is for sensing. The fact that claim 12 is directed to a sensor that is *resistive* does not mean that claim 12 is *mutually exclusive* to claim 25, since claim 25 by not saying the type of magnetic means it is (resistive, capacitive, what-have-you) means that claim 25

can encompass a resistive magnetic means. To this extent as well, there are no mutually exclusive characteristics of the species.

As a third example, independent claim 12 of Species I is directed to a fixed suspension to which the magnetic resistive sensor is mounted above a magnetic medium, and independent claim 25 of Species II is directed to a suspension means for suspending the magnetic means in a fixed manner above the magnetic medium. These claims do not recite *mutually exclusive characteristics*, but in fact recite *similar, non-mutually exclusive characteristics*. The fixed suspension of claim 12 mounts the sensor above a magnetic medium; likewise, the suspension means of claim 25 suspends the magnetic means in a fixed manner above the magnetic medium. That is, both claims 12 and 25 fixably mount or suspend the sensor above the magnetic medium. The same limitations are present in claims 12 and 25. To this extent, too, there are no mutually exclusive characteristics of the species.

As a final example, independent claim 12 of Species I recites that the sensor is adapted to perform a relative movement with respect to and in close contact to a surface of the magnetic medium, and independent claim 25 recites the magnetic means performs a relative movement with respect to a surface of a magnetic medium with which the magnetic means is in close contact. These claims do not recite *mutually exclusive characteristics*, but in fact recite *similar, non-mutually exclusive characteristics*. The sensor of claim 12 performs a relative movement with respect to and in close contact to a magnetic medium surface, and the corresponding magnetic means of claim 25 performs a relative movement with respect to and in close contact with a magnetic medium surface. The same limitations are present in claims 12 and 25. To this extent as well, there are no mutually exclusive characteristics of the species.

Therefore, as noted above, Applicant strongly traverses the restriction requirement as to the species of Invention I. Applicant respectfully contends that the Examiner's position would not be upheld upon a petition to the Director if the Examiner continues to sustain this species restriction. As such, Applicant requests that the Examiner withdraw the species restriction.

Applicant further notes that the Examiner has asserted that the claims to the different species recite mutually exclusive characteristics, but has failed to provide any explanation as to what those mutually exclusive characteristics are, and thus has not meant his *prima facie* obligation. That is to say, for a restriction requirement to be valid, the Examiner has to provide some explanation as to the basis of the restriction requirement, but has not, only summarily positing without explanatory support that the claims recites mutually exclusive characteristics. In fact, they do not, as Applicant has explained above in inordinate detail.

In conclusion, only because Applicant is required to do so to fully answer the restriction requirement and not because Applicant agrees with the Examiner as to the species restriction, Applicant elects Species I, encompassing claims 12-24. Again, however, Applicant strongly traverses the species restriction, submitting as explained above that the species restriction is improper, and that the Examiner should proceed with examination regarding all claims 1-26 of Invention I.

Respectfully Submitted,



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